

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:SCA:LN:TL-N-3254-99

KCPeterson

date: JUL 28 1999

to: Diane McMillan, Appeals Officer, Riverside Appeals

from: District Counsel, Southern California District, Laguna Niguel

subject:

Relocation Payments

Tax Year [REDACTED], [REDACTED] and [REDACTED]

This memorandum is in response to your request for an advisory opinion dated May 14, 1999.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUE

Whether a payment should be included in taxable income if received under a contract with a private party in which the taxpayer agrees to be reimbursed by the private party and waive relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

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Conclusion

On the facts set forth below, we think that the entire relocation payment should be included in gross income.

Facts¹

The facts are the same as the facts set forth in the memorandum dated November 3, 1998. The only additional fact is that the form of the relocation payment was a check dated [REDACTED], for \$ [REDACTED], written to "[REDACTED] and [REDACTED] and [REDACTED]" from the City of Los Angeles.

Discussion

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-55 ("URA"), requires the Federal Government to pay the relocation costs of certain individuals and businesses that are displaced by Federal Government programs. Relocation payments under the URA are not subject to income taxes. 42 U.S.C. § 4636. However, relocation payments are not exempt from tax if the URA does not apply.

If the party acquiring the property is a private entity, the URA does not apply. Isham v. Pierce, 694 F.2d 1196, 1199 (9th Cir. 1982) (The URA did not apply when a private entity, the YMCA, converted an existing rental property into a federally subsidized project for lower-income elderly and handicapped tenants despite the fact that the city of San Francisco contributed Department of Housing and Urban Development ("HUD") funds to the project, HUD provided rental assistance to tenants of the project, and the project conformed to HUD specifications.); Austin v. Andrus, 638 F.2d 113, 116-17 (9th Cir. 1981); Moorer v. Department of Housing and Urban Development, 561 F.2d 175, 183 (8th Cir. 1977) (The URA did not apply when a private entity rehabilitated six housing projects despite the fact that HUD directed and approved of the project, interest related to the project was subsidized by HUD, and HUD provided rental assistance to tenants of the project.); Young v. Harris, 599 F.2d 870, 878 (8th Cir. 1979); Conway v. Harris, 586

¹The additional facts set forth in this opinion were obtained from the photocopy of the check you attached to your facsimile seeking District Counsel's advice. We have made no independent investigation of the facts in this case. Our legal conclusions are contingent on the accuracy of the information provided. Thus, Counsel may need to change its conclusions if the actual facts are different than the facts represented to us in your request for advice. Accordingly, you should not rely on this memorandum, and you should seek further advice from Counsel, if you uncover any information inconsistent with the facts recited herein.

F.2d 1137, 1140 (7th Cir. 1978) (The URA did not apply when a private company converted an existing rental property into senior citizen housing after obtaining approval from the Wisconsin Finance Agency and HUD and after receiving HUD's commitment to provide rental assistance payments.) The only statutory change subsequent to these cases and prior to the year at issue does not appear to affect the validity of these cases. See P.L. 100-17 § 402. There appear to be no tax cases on point, and no cases on point at all after 1982.

Here, [REDACTED] is a limited partnership, not a Government entity. It has partners that are private entities. The [REDACTED] is a corporation, not a Government entity, that receives funds from both public and private sources. It is true that the project received some type of funding from HUD and the City of Los Angeles; however, as can be seen from the cases cited above, even substantial HUD and city financing and regulation does not turn a private project into a Federal project governed by the URA.

Recommendation

Based on the facts provided, we think that the relocation payments received by the [REDACTED] are subject to tax. The property was acquired by a private entity. Accordingly, the payment to the [REDACTED] was not a payment pursuant to the URA.

However, we believe that the facts still need further development. The regulations related to certain HUD projects contradict the cases cited above. Contrary to the case law, certain regulations, promulgated after the above cases were decided, apply the URA to private entities in some instances. For example, see 24 CFR 92.353(c)(1) and (3) which apply the URA to payments made under the Home Investment Partnership Program to private-owners who rehabilitate their property. For this reason, we recommend that you determine what type of relocation payments the City received from HUD² and whether the related HUD regulations treat payments from private parties as URA payments. Should the regulations regarding the program under which the Federal funds were provided permit URA payments by private parties, this could pose a litigation hazard.

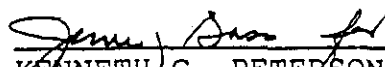
Further, the Department of Transportation is the lead agency for interpreting the URA. According to that agency's regulations, there are certain situations in which the URA does not apply. If the URA does not apply under one of these sections, there is no

² We also recommend you determine exactly how the money flowed from HUD to the City of Los Angeles. Was this money first given to the state and turned over to the city?

need to rely on the case law cited above to support the position that the URA does not apply. We suggest that you further develop the facts in order to determine whether the exceptions under 49 C.F.R. 24.101 (a)(1) and (2) apply.³

If you have any questions about the foregoing, please contact Ken Peterson at (949) 360-3441.

By:


KENNETH C. PETERSON
Attorney

§ 24.101 reads as follows:

Applicability of acquisition requirements.

(a) General. The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.